

IN THE SUPREME COURT OF IOWA

Supreme Court No. 15-1191

SPENCER JAMES LUDMAN,

Plaintiff-Appellee/Cross-Appellant,

v.

DAVENPORT ASSUMPTION HIGH SCHOOL,

Defendant-Appellant/Cross-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT FOR SCOTT COUNTY
THE HONORABLE NANCY S. TABOR

PLAINTIFF-APPELLEE/CROSS-APPELLANT
FINAL REPLY BRIEF
AND REQUEST FOR ORAL ARGUMENT

Steven J. Crowley AT0001845
Edward Prill AT0012435
CROWLEY, BÜNGER & PRILL
3012 Division Street
Burlington, IA 52601
Tel: (319) 753-1330
Fax: (319) 752-3934
scrowley@cbp-lawyers.com
eprill@cbp-lawyers.com

**ATTORNEYS FOR PLAINTIFF-APPELLEE/CROSS-APPELLANT
SPENCER JAMES LUDMAN**

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES.....	3
ISSUES ON CROSS APPEAL.....	4
I. THE DISTRICT COURT ERRED WHEN IT FAILED TO GRANT PLAINTIFFS MOTION FOR DIRECTED VERDICT CONCERNING PLAINTIFFS ALLEGED COMPARATIVE FAULT FOR MERELY STANDING IN OR NEAR THE SOUTH DOORWAY OF THE ASSUMPTION DUGOUT.....	4
A. Preservation of Error.....	4
B. Standard and Scope of Review.....	4
C. Discussion.....	4
1. Assumption failed to prove comparative fault on the part of Spencer Ludman due to unreasonable failure to avoid injury.....	4
2. Ludman’s presence in the south doorway was not the result of a free and independent choice, but created by his role as a high school player, directions from other adults, and even Assumptions own conduct.....	20
CONCLUSION.....	21

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Coker v. Abell-Howe Company 491 NW 143 (Iowa 1992)</i>	15, 16
<i>Greenwood v. Mitchell 621 NW 2nd 200 (Iowa 2001)</i>	15, 16, 17 19, 20, 21
<i>Etchen v. Holiday Rambler Corp. 574 NW 2d. 355 (Iowa Court of Appeals 1997)</i>	18, 19
<i>Tim O’Neil Chevrolet v. Foristall 551 NW 2d.611, 614 (Iowa 1996)</i>	18, 19
<i>Thacker v. Eldred, 388 NW, 2d. 665, 670 (Iowa Court of Appeals 1986)</i>	18, 19

ISSUE ON CROSS APPEAL

- I. THE DISTRICT COURT ERRED WHEN IT FAILED TO GRANT PLAINTIFFS MOTION FOR DIRECTED VERDICT CONCERNING PLAINTIFFS ALLEGED COMPARATIVE FAULT FOR MERELY STANDING IN OR NEAR THE SOUTH DOORWAY OF THE ASSUMPTION DUGOUT.**

A. Preservation of Error

The parties agree that error was preserved with respect to this issue.

B. Standard and Scope of Review

The parties agree that the controlling standard of review is whether there was substantial evidence in the record to support a finding of negligence on the part of Spencer Ludman, and that his negligence was a cause of his damages.

C. Discussion

- I. Assumption Failed to Prove Comparative Fault on the Part of Spencer Ludman Due to Unreasonable Failure to Avoid Injury.**

When one strips away the overgeneralizations, speculation, and hyperbole from Assumptions interpretation of the evidentiary record, it becomes clear that the defendant simply failed to prove that Spencer Ludman was guilty of comparative fault for failing to get behind the limited fencing of the Assumption dugout before he was hit. The undisputed evidence from actual witnesses in the Assumption dugout at the time of

injury, all agreed that the available space was very crowded with people and equipment throughout the dugout. There is no direct or circumstantial evidence in the record sufficient to prove:

- a) That Spencer Ludman was violating any warnings, directions, rules or procedures of his coaches or team at the time he was hit.
- b) That Spencer Ludman had the opportunity, and the physical space to move from inside the unprotected five foot south doorway to a location behind the limited fence available, after he had retrieved his regular cap and glove from his equipment bag at the south end of the dugout.

In lieu of the creative interpretations common to the defendant appellant's brief on this issue, plaintiff-appellee will cite the actual testimony relevant to the comparative fault issue.

Muscatine Coach Nathan Panther testified as follows:

Q. If you were at bat, how many people would normally be in that dugout that we see on the screen, the visitor's dugout?

A. Well you would have all your players our pitching coach would have been in there and Coach Leech. I would have been coaching third base and Coach Ravenscraft would be coaching first base, and then if there was anybody on base. You are looking at the full team plus two coaches and minus whoever is on deck or hitting. (App. 215 Trans 293:22- 294:6).

Q. Ok, let's go back and talk about, do you remember the circumstances of the game at the time of this injury? Do you know the inning and who was at bat?

A. I don't remember what inning it was. I do remember Brooks Wagner was batting, a right handed batter. He bats down towards the bottom of the lineup, 8 or 9, somewhere around in there, and I remember him being late on a fastball and hitting a line drive very hard into the dugout.

Q. In which door did it enter? The one closest to the plate or the far one?

A. The far one.

Q. And before that line drive by Brooks went into the dugout, did you see Spencer hanging outside the dugout?

A. No I did not.

Q. Did you see Spencer do anything careless or wrong, in your view before he was hit?

A. No I didn't. Like I said, when the ball went into the dugout, I didn't see anybody standing up towards there. All I saw was the ball go into the dugout. (Emphasis mine) (Testimony of Nathan Panther App. 215. Trans 295:10 – 296:3.)

Muscatine Coach Shawn Ravenscraft testified as follows:

Q. If we look at the photograph itself and there is an actual seating area inside the dugout is that correct?

A. Yes and there is a seating area that sits above the seating area below do you see that? Answer: Sure.

Q. Is it your understanding or experience, Shawn that when you would go to this dugout as either a player or a coach that one would sit with one on the seating area and the other sit right behind the other kid on the second area?

A. Kids often sat at the lower level and the upper level.

Q. Would they be right behind one another?

A. Sometimes.

Q. Was it more common for them not to do that, meaning that they didn't want to be sitting so close to one another?

A. Sometimes, yea and you don't want to really sit straddled between the person sitting behind you as well so-

Q. Were talking about a team of 16-18 year old boys. It wasn't really common for them to sit that way?

A. Correct.

Q. Based upon your experiences as a player and as a coach, what types of activities go on during the procession of a baseball game while you are in the dugout?

A. I would say most everybody is watching the game, kind of following the game, talking about situations, what's going on, what the plan is, what were going to do next, and some kids talking about their day and things like that. We try to keep it as much baseball related as possible though.

...

Q. Because of the way the dugout is set up, would you consider this to be a small dugout?

A. I would say it's fairly small.

Q. And its' crowded in their when it's a full team?

A. Yes.

Q. Would you have an opinion that because of the way the dugout is setup, and it's small and crowded that it was either likely or necessary that players would be on the far end of the dugout near that second opening- (Emphasis mine)

A. Correct. (Emphasis mine)

Q. That we discussed?

A. Yes.

Q. And if they were there during the playing of the game, would they be doing anything wrong or improper according to Muscatine's High School rules?

A. No.

Q. Did the coaching staff implement a rule that while your team was up to bat, the players that are not on deck or at the home plate or on one of the bases should not be on the field of play?

A. Correct.

Q. Did Assumption, to your knowledge provide any other place for the visitor's team to be or go during a baseball game other than this dugout?

A. No.

(App. 229,230 Trans 352:5-354:23.)

Head Muscatine baseball Coach Robert Leech testified as follows:

Q. Coach Leech, what rules did you have as head coach for Muscatine High School when you came to Davenport Assumption for a game?

A. Well, we have a general bunch of rules pertaining to our team, but in particular in this particular dugout, I would be the first person sit in this space. There would be no players to my left. That first opening is- I would say even with that pole because I felt I was as safe as you could be there and then everybody would have to be down to my right...

Q. Would you ever allow players to sit to your left then?

A. No.

Q. Why was that?

A. Because it was dangerous, I mean, I wasn't very comfortable sitting there myself, but this is a very close situation. I mean, from the home plate to this position is very close, very close. (App. 301 Trans 657:24- 659:6.)

...

Q. As a result of the rule that you suggested and implemented, did that force the players to sit to your right in the dugout then?

A. Yes.

Q. And would that shorten the bench space?

A. O absolutely...

Q. What would happen as a result of the players not being able to sit where you instructed them to sit?

A. Ok, what happens is typically, essentially in a baseball game, particularly during the baseball year we have 15 or 16 players trying to sit in this area, and I have two coaches, first base coach and third base coach, but between innings, we have 18 kids or 16 kids occupying this space right here.

Q. What does that suggest?

A. It's awfully crowded. (Emphasis mine)

Q. What other types of objects would be in the dugout other than the bodies of the players?

A. Every kid carries a bag that is probably too big for them to carry. I mean you know what I mean? They pack everything in there that they can pack in there. They could probably live in there for a couple of weeks, so you have everybody- you have 18 or 16 bags in here as well plus our equipment bag that we carry, our helmets, our ball bags, and all that kind of stuff we would keep them down in this area, but mostly the kids would either try to stick it under the bench or at the end of the bench. (Emphasis mine)

...

Q. Other than the issue of distance that we have talked about, did you have any other concerns about this dugout?

A. My only- my only concerns were- about this dugout were the safety of my kids and how crowded it was. That's basically my feel. (App. 301 Trans 660:1-662:1.)

Coach Leech recalled the incident where Spencer Ludman was hit as follows:

Q. Coach Leech, I want to talk with you about July 7th of 2011. Do you recollect that day?

A. Yes.

Q. Can you describe for the jury what the game situation was prior to Spencer being hit?

A. Um, I don't remember the inning. A lot of that stuff kind of runs together over time, but I do know that we were on offense and that the game was close and that our number nine hitter

was at bat. I know that- so I know we were on offense, so our dugout was full of kids. Um those are the things that stick out in my mind.

Q. Do you know where you were at?

A. I was in my position at the end of the bench.

Q. And do you know who the number nine hitter was?

A. Uh huh, Brooks Wagner.

Q. And tell us what you saw or observed when Brooks hit the foul ball that ended up striking Spencer.

A. We were- do you want me to go through- we were facing a good pitcher who through pretty hard and Brooks is- Brooks was not hitting very well, so he was batting number nine. That's where we place those folks and the pitcher threw a fast ball and he was late, ball comes directly into the dugout.

Q. Did you watch the ball from the moment it went off his bat to going into the dugout?

A. As much as you could. Remember that's a-that's fractions of seconds.

Q. Are you able to describe for the jury the trajectory of the ball itself?

A. Yeah it was – if you know what baseball is, it was a line drive. It had no hump in hit. It was a shot.

Q. And where did you see the ball go?

A. Directly into the end of the dugout.

Q. And that, you're referring to?-

A. The far end, this end right here.

Q. Did you know where Spencer was prior to that moment?

A. No I didn't. No. (App. 303, Trans 668:13- 670:12.)

Coach Leech also confirmed that he did not have any rules against standing on the south end of the dugout. (App. 306 Trans 23-25.)

Jim Ludman, Spencer's father, testified as follows from his vantage point seated in a lawn chair on the south end of the visitors' dugout behind the fence.

Q. On July 7th of 2011, Jim, what did you notice about the visitor's dugout and the activities inside as the game progressed?

A. Coach Leech, he would sit down toward the left end, nobody could sit to his left and everybody would be kind of crowded here on the right hand half.

Q. What were you doing just moments before Spencer was hit by the baseball?

A. We were watching the game and we had a camera, Lori wanted to make sure we could get some pictures but I think they were pretty full so we were going to get the pictures off there and she said I will do it, so she was looking down at the camera removing pictures and I was watching. I hear Spencer try to encourage the batter, we need a hit, and I was watching the batter.

Q. Prior to Spencer being hit by the baseball, were you able to see Spencer at all?

A. Yes I could see him.

Q. Where did you see him at?

A. He was down on the right end-

Q. Sorry. Did I take it away from you too soon?

A. I think so.

Q. I apologize.

A. Better if I can point it out right in that area.

Q. Jim, let me now show you what has been marked as plaintiff's Exhibit 48. I will just show it to you as so you can take a look at it initially, can you identify what's in that photograph?

A. That is the south end doorway of the visitor's dugout.

Q. This would be the second opening?

A. Yes.

Q. Ok, I will put this on the monitor. And as we look at plaintiff's Exhibit 48, the boards that are to the far left of the photograph, maybe you could point those to the jury, that's the south wall of the dugout?

A. Yes.

Q. And you would have been seated how far away?

A. About 10ft, again, it is where we started because the posts are in 8ft sections.

Q. Based upon your recollection prior to Spencer being hit July 7, 2011 can you place him where he was in the dugout?

A. That day?

Q. Yes.

A. He was down in here because everybody threw their catchers equipment down on the floor here. Really didn't have anywhere else to put it, so they put it there. The barrel was always there, and then he was down in here. I noted that because my father always stood with one foot up on something a lot. He does. I do it, so he had one foot on the step and his left foot was directly down on the ground and Grant McConnaughey was directly to his left. Everybody else was here.

Q. Jim, prior to Spencer being hit by the baseball, based on your observations, was he in the dugout?

A. Yes.

Q. Did you see Spencer at any point in time moments before leave the dugout?

A. No. They are not allowed.

Q. Do you know what Spencer was doing just moments before he was hit by the baseball?

A. Um, he was standing there with Grant next to him talking, encouraging the batter.

Q. Who was the batter?

A. Brooks Wagner.

Q. How do you recall that?

A. Because I watch the game intently, and I knew every batter, every player when they came up, who they were.

Q. Jim, why don't you explain to the jury what happens next when Brooks hits the foul ball. And maybe I can take this thing from you now.

A. Heard the crack of the bat, and it was so quick, it was a split second. Him and Grants heads both turned toward the outfield. They had been watching the batter. As it turned, he just stiffened up and dropped straight back.

Q. Did you watch the ball leave Brooks bat?

A. I really couldn't see it.

Q. Did you watch- were you able to see the flight of the ball at all?

A. It was so fast, I just heard it hit him. I heard the sound. (App. 331 Trans 789:23- 793:19.)

Spencer Ludman's testified as follows:

Q. Before you were hit on that date, did you notice anything about the visitor's dugout at Assumption?

A. Yeah. Yes, I did.

Q. And what did you notice about it?

A. Between my teammates and I, we always just noticed how cramped it was for us with the equipment and everything, and as we- I think we talked about this earlier, that there use to be a net on the top, and I did not realize that that had been changed, but

yeah. Other than that, I just noticed that there is a cement floor there now and that it was just as cramped as always.

Q. Now let's talk about the events of July 7th and let's speed up and get to what happened. What do you remember about the game? Where was the game in progress at the time you were hit?

A. I don't remember what inning. I know that we were behind, and I know who was up to bat.

Q. Who was at bat?

A. Brooks Wagner.

Q. Was Brooks the same age as you? younger

A. He was a year younger.

Q. Had you been on deck or batted before you got hit? Strike that. Poor question. In the inning when your team was in the dugout had you batted that inning just before you got hit?

A. No.

Q. Alright. How many- do you remember how many outs there were at the time of the foul that hit you?

A. There were two outs.

Q. Tell the jury, please, where you were and what you were doing when you got it.

A. Um, I was on the far end of the dugout. We had been referring to it as the second opening, I believe, and I had my right foot on the one step in between the ground level and field level and my left foot on the ground, and I had just got into that position. Before that, I was in the hole. I was the second batter in the order, and I saw that Brooks had two strikes on him. He was not a very good hitter, and I didn't think that there was any way that he was going to reach base safety, so I grabbed my glove and my hat and I put my hat on. I hadn't put my glove on yet, and then I looked to my left and there was nowhere for me to go, so I just put my foot up there on that step, and that's when I got hit. (Emphasis mine)

Assumption had the burden of proving the affirmative defense of unreasonable failure to avoid injury. (*See Coker v. Abell-Howe Company* 491 NW 2nd 143 (Iowa 1992) *See also Greenwood v. Mitchell* 621 NW 2nd 200 (Iowa 2001)). The only testimony in the record established that the Assumption visitors' dugout was extremely crowded with people and equipment from one end to the other. Yet, Assumption failed to call any witnesses to support its affirmative defense during the trial who could confirm that Ludman had the opportunity (time), and the physical space (a place behind the fence) to move behind the fence after retrieving his glove and hat from his equipment bag on the south end of the dugout.

Assumption did not call one witness out of fifteen to seventeen Muscatine coaches and players who were in the dugout with Spencer Ludman, such as Grant McConnaughey, who was standing next to Ludman. Assumption never introduced any specific evidence about the flight time or path of the ball, or exactly where Ludman was in the dugout at impact. Assumption called no expert to reconstruct the event, or to demonstrate when and how Ludman was to have moved from the equipment bags in the south doorway to a more protected area in the time between retrieving his glove and cap and his being hit with the foul.

The Iowa Supreme Court has applied the “avoidable consequences doctrine” to the interpretation of the Iowa Comparative Fault Act, particularly Code Section 668.1, wherein fault includes “unreasonable failure to avoid an injury or to mitigate damages.” (*See Coker v. Abell-Howe Company* 491 NW 2nd 143 (Iowa 1992) at 148 and 149. *See also Greenwood v. Mitchell* 621 NW 2nd 200 (Iowa 2001) at 205.) In (*Mitchell, Supra,*) the court discussed the definition of substantial evidence sufficient to support an instruction in the context of the affirmative defense of failure to mitigate damages. The District Court submitted the failure to mitigate defense to the jury, who then returned a verdict of significant comparative fault against the plaintiff. The Supreme Court reversed the judgment, holding that the defendant had failed to provide “substantial evidence” to support submission of the affirmative defense.

To prevail on either affirmative defense (failure to mitigate, or unreasonable failure to avoid injury) it is incumbent upon the proponent of the defense to show that the plaintiff acted unreasonably in failing to undertake the mitigating activity. (*See Mitchell, Supra at 205.*) Holding that the defendant in *Greenwood* had failed to introduce substantial evidence to prove its affirmative defense, the court noted “conspicuously absent from the

record is any testimony that *Greenwood's* failure to continue his home exercise regimen in perpetuity was unreasonable.”

As the *Greenwood* Court made clear, it is not enough for a defendant to merely allege an affirmative defense, and then rely upon the Court and jury to fill in the gaps in proof of every element of the defense (volitional, unreasonable conduct and causal connection).

As demonstrated by the testimony cited above, conspicuously absent from this record is any proof that Spencer Ludman acted unreasonably in briefly standing next to his teammate in or near the dugout's south doorway under the circumstances which existed at the time. Equally important is the fact that there is no proof that Ludman had the opportunity and physical space to change his position to a more protected vantage point.

Assumption failed to call any player or coach who was in the Assumption dugout at the time of Ludman's injury to establish that Ludman had the time and the physical room to get behind the protective fence after he retrieved his regular hat and baseball glove. Instead, Assumption relies on speculation, and conjecture to fill in these fatal gaps in its proof.

Unfortunately, the District Court erroneously “filled in the gaps” in Assumptions proof to conclude that substantial evidence existed to submit the affirmative defense of unreasonable failure to avoid injury. The District

Court cited testimony which established that the north end of the Assumption visitor's dugout was used for storage of team equipment by Muscatine. It then concluded (without any direct testimony) that the jury could find that Ludman must have been able to walk inside the Assumption dugout to the north end to get a helmet and/or bat and back to the south end where he remained until he was hit. Apparently, the Court then went on to conclude a jury could find that there must have been ample opportunity (after he donned his regular cap and glove) and room for the plaintiff to have gotten behind the fence at the south end of the dugout if he had wanted to do so. (App. 347, Trans 893:16-894:9) Simply put, the Districts Court's analysis went too far afield.

When analyzing evidence in support of a claim of negligence, the question an appellate court faces is not whether the evidence might support a different finding, but whether or not it supports the findings actually made. (*See Etchen v. Holiday Rambler Corp.* 574 N.W. 2d. 355 (Iowa Court of Appeals 1997) at 359, citing *Tim O'Neil Chevrolet v. Foristall* 551 N.W. 2d. 611, 614 (Iowa 1996). In the context of this negligence case, substantial evidence must be either direct or circumstantial, not merely a surmise or conjecture. (*See Etchen, id*, see also *Thacker v. Eldred*, 388 N.W. 2d. 665, 670 (Iowa Court of Appeals 1986). Ludman was at the south, unprotected

end of the dugout for a reason. He was there to emerge “on deck” with a batting helmet on, as instructed by his coaches. When that became unlikely he changed hats. There is no evidence of any kind that during this inning, Ludman went to the north end of the Assumption dugout before he was hit for any reason whatsoever. There is no direct or circumstantial evidence that Ludman, or anyone else for that matter, could move freely about in the south end of the Assumption dugout immediately before he was hit by Wagner’s foul ball. The Court apparently took the fact that some of the Muscatine baseball equipment in the dugout was stored on the north end of the dugout, and surmised that meant there was room to move about during the entire inning when Ludman was hit, at the other end of the dugout near the open south doorway. The testimony is directly opposite.

Likewise, there was no circumstantial evidence that would have allowed a legitimate inference that Ludman was anything but accurate and correct when he testified that once he realized he would likely not get to bat, he donned his regular hat, and had nowhere to go except to stand next to his teammate in the south doorway while Brooks Wagner finished batting. While the District Court was required to view the evidence in the record in the light most favorable to the party asking to submit the affirmative defense, the Court was not free to engage in speculation, conjecture, and

“filling in gaps” to submit the defense. (*See Greenwood, id, Etchen id, and, Thacker id.*)

2. Ludmans presence in the south doorway was not the result of a free and independent choice, but created by his role as a high school player, directions from other adults, and even Assumptions own conduct.

Notably absent from Assumption’s response to this cross-appeal issue is mention of several crucial and important undisputed facts. First, at the time of his injury, and despite his age (18) Spencer Ludman was a Muscatine High School baseball team member, and so, while technically an adult, he was still expected to comply with the same rules and procedures generated by his adult superiors, his coaches. He was standing in the only dugout Assumption provided for him, along with all other Muscatine coaches and players. Second, Ludman was under the direct supervision and direction of Muscatine coaches, precisely because he loved the game of baseball and wanted to play out his senior year. He had no control over where the other fifteen to seventeen people sat or stood in the hot, overcrowded dugout provided by Assumption. Third, the only testimony which addresses the issue confirmed that the fifteen to seventeen Muscatine players and coaches rarely sat “two deep” on the limited amount of bench space available to the right of Coach Leech. Last but certainly not least, Assumption is well aware that only eighteen to twenty feet of bench space

was actually usable on the date of injury to Spencer Ludman. Nobody could stand in front of or to the left of Coach Leech because he had to see the game from his vantage point. Due to the danger of foul balls entering the Assumption visitors' dugout at high speed, Coach Leech sat approximately five to six feet from the north end of the bench, and would not allow his players to occupy the bench or dugout north of him (to his left as he faced the field). That left less than twenty feet of bench space, and less than twenty-five feet of total dugout space (including the open south end) for fifteen to seventeen players and coaches from Muscatine.

CONCLUSION

As in *Greenwood*, this Court should reverse the effect of the comparative fault submission and remand to the District Court, with instructions to amend the judgment to reflect the entire verdict, without deduction of any amount for comparative fault.

Respectfully submitted,



Steven J. Crowley AT0001845

Edward Prill AT0012435

CROWLEY, BÜNGER & PRILL

3012 Division Street

Burlington, IA 52601

(319) 753-1330; (319) 752-3934 – fax


scrowley@cbs-lawyers.com

eprill@cbs-lawyers.com

ATTORNEYS FOR SPENCER JAMES LUDMAN

CERTIFICATE OF COST


The undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Brief and Argument was n/a (e-filed), exclusive of sales tax, delivery, and postage.

BY: 
Steven J. Crowley AT0001845

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 4,626 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point, Time New Roman.


BY: 
Steven J. Crowley AT0001845

CERTIFICATE OF SERVICE

The undersigned certifies a copy of Plaintiff-Appellee's Reply Brief was filed with the Clerk of the Iowa Supreme Court via EDMS and served upon the following persons by EDMS on the 29th day of April, 2016:

Thomas M. Boes
BRADSHAW,FOWLER,
PROCTOR & FAIRGRAVE, P.C.
801 Grand Avenue, Suite 3700
Des Moines, IA 50309-8004
Boes.thomas@bradshawlaw.com
Attorney for Defendant-Appellant

Brian J. Humke, AT0003847
Ryan G. Koopmans, AT0009366
NYEMASTER GOODE, P.C.
700 Walnut Street, Suite 1600
Des Moines, Iowa 50309-3899
bjh@nyemaster.com
rgk@nyemaster.com
Attorneys for Amicus Curiae

By: 
Steven J. Crowley AT0001845